

KANSAS

CONSUMER PROTECTION
DIVISION



ANNUAL REPORT 2008

Published by the
Office of Attorney General
Steve Six

120 SW 10th, 2nd Floor
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December 31, 2009

TO: The Honorable Mark Parkinson, Governor
and Members of the Kansas Legislature

I am pleased to provide to you the 2008 Annual Report of the Consumer Protection/Antitrust Division of the Office of Attorney General. In 2008, the Consumer Protection/Antitrust Division closed 7,583 investigative requests without litigation, resulting in consumer savings of \$1,088,726.82. The Division's enforcement efforts in 2008, in addition to obtaining judgments and settlements for restitution, civil penalties and investigative fees, also obtained injunctive orders against businesses found in violation of the Kansas Consumer Protection Act.

Staff members of the Consumer Protection/Antitrust Division travelled throughout Kansas to educate the public about consumer issues in high schools, colleges, civic groups, community organizations and industry associations. Thousands of consumers and business professionals attended these presentations and visited our Consumer Protection booth at the Kansas State Fair. In conjunction with the educational efforts, we continued to publish and distribute brochures on a wide range of consumer topics. We also maintained our website to provide online assistance to consumers. As a result of these educational efforts, many Kansas consumers have been made aware of the common scams and frauds, and are less likely to fall victim to unscrupulous business practices.

We continue to participate in consumer protection efforts on a national level through active cooperation with the National Association of Attorneys General (NAAG). Such cooperation is particularly beneficial in combating deceptive and unconscionable business practices by out-of-state businesses.

It is a top priority of my office to protect Kansas consumers from deceptive and unconscionable business practices. We continue to propose legislation to strengthen the KCPA in order to better protect our citizens.

If my staff or I may be of service to you or your constituents, or if we can answer any questions regarding consumer protection or antitrust in Kansas, please feel free to contact me.

Very truly yours,

Steve Six
Attorney General

**OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS**

**STEVE SIX
ATTORNEY GENERAL**

**CONSUMER PROTECTION/ANTITRUST DIVISION STAFF
January 1, 2008 through December 31, 2008**

Angela Wilson	Deputy Attorney General
Emilie Burdette	Assistant Attorney General
Lynette Bakker	Assistant Attorney General
Meghan Barnds	Assistant Attorney General
Lee Urban	Assistant Attorney General
Tai Vokins	Assistant Attorney General
Becky Schwant	Paralegal
Angela Carlon	Legal Intern
Ryan Ludwig	Legal Intern
Sonya Johnson	Outreach Coordinator
Jerry W. Howland	Special Agent Supervisor
Amber Capoun	Special Agent
Natalie Hogan	Special Agent
Sheila Krohe	Special Agent
Erin Land	Special Agent/Constituent Services
John Lewis	Special Agent
Samuel Jake Owen	Special Agent
Carrie Fink	Administrative Assistant
Marcia Shuart	Administrative Assistant
Amber Toy	Administrative Assistant
Kaitlyn Beech	Constituent Services
Shawn Bryant	Constituent Services
Will Lawrence	Constituent Services
Caitlin Shanks	Constituent Services
Kilie West	Constituent Services

CATEGORIES OF INVESTIGATIVE REQUESTS RECEIVED

Investigative Requests Filed:	7357
Investigative Requests Closed:	7583
 Consumer Savings Without Litigation:	 \$1,088,726.82
Consumer Restitution Awarded in Litigation: (excluding Assurances of Voluntary Compliance)	\$137,749.00
Enforcement Fund/Penalties/Fees Awarded in Litigation (excluding Assurances of Voluntary Compliance)	\$5,574,152.19

<u>Category</u>	<u>Investigative Requests Received</u>	<u>Percentage of Total</u>
Account Access Ruse	97	1.32%
Advance Fee	15	0.20%
Advertising	351	4.77%
Antitrust	8	0.11%
Appliances	60	0.82%
Assistive Device Lemon Law	24	0.33%
Auto – Title/Odometer	31	0.42%
Auto – Sales	221	3.00%
Auto – Repair/Service	188	2.55%
Auto – Warranty	149	2.02%
Boats, Boating Equipment, Repairs, etc.	2	0.03%
Book, Record & Tape Clubs	5	0.07%
Business Opportunities Services	79	1.07%
Cable Television	40	0.54%
Cemeteries	37	0.50%
Charitable Organizations	27	0.37%
Clothing	8	0.10%
Collectibles/Antiques	3	0.04%
Collection	562	7.64%
Computer - Internet Sales	231	3.14%
Computer - Online Services	59	0.80%
Computers	56	0.76%
Contests/Sweepstakes	159	2.16%

<u>Category</u>	<u>Investigative Requests Received</u>	<u>Percentage of Total</u>
Credit	377	5.12%
Credit Reporting Agencies	47	0.64%
Discount Buying Clubs	17	0.23%
Door-To-Door Sales	47	0.64%
Education	28	0.38%
Employment Services	7	0.09%
Farm Implement/Equipment	14	0.19%
Faxes Unsolicited	30	0.41%
Floor Coverings	7	0.09%
Food Products	8	0.11%
Funeral Homes	14	0.19%
Furniture	26	0.35%
Gasoline Pricing and Contents	63	0.86%
Health Services (doctors, dentists, hospitals, etc.)	80	1.09%
Health Spas & Weight Salons	91	1.24%
Hearing Aids	11	0.15%
Heating & Air Conditioning	26	0.35%
Home Construction	60	0.81%
Home Improvement	208	2.83%
Identity Theft/Privacy Issues	54	0.73%
Invoice & Billing Schemes/Negative Selection	25	0.34%
Jewelry	8	0.11%
Junk Mail	38	0.52%
Loan Finders/Recovery Companies	26	0.35%
Magazine Subscriptions	84	1.14%
Mail Order	114	1.55%
Medical Discount Cards	39	0.53%
Medical Equipment/Devices	15	0.20%
Miscellaneous Questions/Written Inquiries	863	11.73%
Mobile Homes & Manufactured Homes	17	0.23%
Mortgage Escrow Problems	2	0.03%
Mortgages	148	2.01%
Motorcycles & Bicycles	79	1.07%
Moving & Storage	18	0.24%
Multi-level & Pyramid Distributorship Co.	28	0.38%
Musical Instruments, Lessons, etc.	2	0.03%
Nigerian Style Letters	71	0.96%
No-Call	233	3.17%
Nurseries, Lawn, Gardening & Landscape	24	0.33%
Nursing Homes	7	0.09%
Office Equipment & Supplies	3	0.04%

<u>Category</u>	<u>Investigative Requests Received</u>	<u>Percentage of Total</u>
Overpayment Scam	15	0.20%
Pest Control	9	0.12%
Pets/Animals	20	0.27%
Photo Studios, Equipment & Services	7	0.09%
Real Estate (houses and property)	15	0.20%
Rebates	61	0.83%
Satellite Systems	81	1.10%
Securities & Investment (other than stocks & bonds)	32	0.43%
Security Systems and Services	31	0.42%
Services (general)	681	9.26%
Services (professional)	42	0.57%
Sporting Goods	10	0.13%
Steel Buildings	4	0.05%
Stereo Equipment	2	0.03%
Telephone – Cramming/Slamming/800#'s and Intl. Calls	87	1.18%
Telephone - Service, Cell Phones	337	4.58%
Telephone - Prepaid Phone Cards	12	0.16%
Telephone Solicitations	122	1.66%
Televisions and VCRs	17	0.23%
Timeshare Sales	22	0.30%
Toys	7	0.09%
Travel	117	1.59%
Unauthorized Practice of Law	13	0.18%
Unsolicited e-mail (spam)	42	0.57%
Warranty Problems (other than automobiles)	70	0.95%
Water Softeners, Conditioners, Purifiers, etc.	15	0.20%
Work-At-Home Schemes	15	0.20%

TOTAL INVESTIGATIVE REQUESTS RECEIVED 7357

* Percentages are rounded and do not equal 100%

TOP TEN INVESTIGATIVE REQUESTS RECEIVED BY CATEGORY

- 1. Collection**
- 2. Credit**
- 3. Telephone – Service and Cell Phones**
- 4. No-Call**
- 5. Computer – Internet Sales**
- 6. Auto - Sales**
- 7. Home Improvement**
- 8. Auto – Repair and Service**
- 9. Contests/Sweepstakes**
- 10. Auto - Warranties**

NOTE: List excludes written inquiries, questions and general service (miscellaneous) categories.

DISPOSITION OF CLOSED INVESTIGATIVE REQUESTS

Requests Closed Without Litigation

<u>Disposition Description</u>	<u>Requests Closed</u>	<u>Percentage of Total</u>
Inquiry or Information Only	1407	18.55%
Referred to Private Attorney	697	9.19%
Referred to County/District Attorney	11	0.14%
Referred to Other State Attorney General	160	2.11%
Referred to Other Government Agency	367	4.84%
Referred to Small Claims Court	178	2.35%
Referred to Federal Agency (FTC, Post Office, etc.)	81	1.07%
Money Refunded/Contract Cancelled	825	10.88%
Merchandise Delivered to Consumer	24	0.32%
Repaired/Replaced Product	132	1.74%
Mediation Only - No Savings	347	4.58%
No Reply From Complainant	152	2.00%
Unable to Locate Respondent	136	1.79%
Practice Complained of Discontinued	4	0.05%
Respondent Out of Business	104	1.37%
No Jurisdiction Under KCPA	221	2.91%
No Violation	385	5.08%
Insufficient Evidence to Prove Violation	614	8.10%
Complaint Withdrawn	63	0.83%
Unable to Satisfy Complaint - No Further Action	16	0.21%
Other	1318	17.38%
No Call - Collection Exemption	3	0.04%
	7245	

Requests Closed Through Litigation:

<u>Disposition Description</u>	<u>Requests Closed</u>	<u>Percentage of Total</u>
Consent Judgment	188	2.48%
Voluntary Compliance Agreement	12	0.16%
Dismissed Without Prejudice	11	0.15%
Default Judgment	14	0.18%
Judgment For State - Civil Penalties Only	3	0.04%
Judgment For State - Penalties, Restitution and Injunction	110	1.45%
	338	

TOTAL CASES CLOSED 7583

* Percentages are rounded and do not equal 100%

CONSUMER PROTECTION ENFORCEMENT ACTION SUMMARY OF 2008

LAWSUITS FILED and JUDGMENTS:

State v Joe's Unlimited Auto

Wyandotte County 08-CV-000654

3-25-08

The Attorney General entered into a Consent Judgment with the Defendant related to excluding or limiting the implied warranty of merchantability and not providing a material benefit in selling the consumer a vehicle. The Defendant agreed to pay \$3,500.00 in civil penalties and investigative fees, and \$1,500.00 in consumer restitution, as well as injunctive measures regarding business practices.

State v Clear Choice, LLC & Michael Bridges

Jackson County 08-CV-000023

04-18-08

The Attorney General filed suit against the Defendant(s) for violations of the KCPA related to misrepresentations and not providing a material benefit to consumers for window replacement services. The case was still pending at the end of 2008.

State v Andrew Wrabek d/b/a Roman Construction & Remodeling

Neosho County 08-CV-000042

04-28-08

The Attorney General filed suit against the Defendant(s) for violations of the KCPA related to misrepresentations and not providing a material benefit to consumers for home improvement services. This case was still pending at the end of 2008.

State v Merck & Co.

Shawnee County 08-CV-000761

05-20-08

The Attorney General entered into a multi-state Consent Judgment with the Defendant related to misrepresentations in the marketing and advertising of drug products. The Defendant agreed to pay \$58,000,000.00, which Kansas received \$1,278,673.19 for the enforcement fund and fees, and injunctive measures regarding business practices.

State v 1st American Coin LTD d/b/a 1st American Reserve

Shawnee County 08-C-000895

06-18-08

The Attorney General entered into a Consent Judgment with the Defendant related to telemarketing practices. The Defendant agreed to pay \$30,000.00 in civil penalties and investigative fees, and \$90,675.00 in consumer restitution, as well as injunctive measures regarding business practices.

State v Charles D. Gibbes

Shawnee County 08-C-000948

06-26-08

The Attorney General received a Default Judgment against the Defendant for violation of the KCPA related to not providing a material benefit to consumers in selling refrigerator magnets. The State of Kansas was awarded \$10,000.00 in civil penalties and fees, and \$395.00 in consumer restitution.

State v Sizzors, Inc.

Douglas County 08-CV-000274

07-17-08

The Attorney General filed suit against the Defendant for violations of the KCPA related to unconscionable practices in selling and honoring gift cards. The case was dismissed without prejudice, as the Defendant and the State of Kansas reached an agreement.

State v Red Horse Motorworks, LLC

Shawnee County 08-C-000196

07-25-08

The Attorney General filed suit against the Defendant for violations of the KCPA related to not providing a material benefit in selling a motorcycle to the consumer. The case was dismissed without prejudice.

State v International Coating & Chemical Co., Thomas C. Pavlik

Shawnee County 08-C-000363

08-07-08

The Attorney General received a Default Judgment against the Defendant(s) for violation of the KCPA related to not providing a material benefit to consumers and not disclosing the inability to provide chemical and coating products within the time frame promised to consumers. The State of Kansas was awarded \$20,000.00 in civil penalties and fees, and \$10,283.00 in consumer restitution.

State v Chad Franklin Suzuki

Wyandotte County 08-CV-001647

08-18-08

The Attorney General filed suit against the Defendant for violations of the KCPA related to deceptive and unconscionable acts in the soliciting and advertising of automobiles for sale. The case was still pending at the end of 2008.

State v Twisted Liquid Racing, LLC

Butler County 08-CV-000414

08-23-08

The Attorney General filed suit against the Defendant for violations of the KCPA related to deceptive and unconscionable acts and not providing a material benefit to consumers regarding services to radio controlled model boats. The case was still pending at the end of 2008.

State v Akash & Sagar, Inc. (Economy Lodge)

Ford County 08-CV-000191

09-22-08

The Attorney General entered into a Consent Judgment with the Defendant related to the profiteering from a disaster by raising prices during a declared emergency. The Defendant agreed to pay \$500.00 in investigative fees and injunctive measures regarding business practices.

State v Dallas Sawyer d/b/a Fairway Auto Sales

Sedgwick County 08-CV-003808

09-30-08

The Attorney General filed suit against the Defendant for violations of the KCPA related to deceptive and unconscionable business practices when selling automobiles. The case was still pending at the end of 2008.

State v Nicole Pickens and Jeremy Pickens d/b/a Outdoors Unlimited & Landscape

Jefferson County 08-CV-000110

10-16-08

The Attorney General received a Default Judgment against the Defendant(s) for violation of the KCPA related to misrepresentations and not providing any material benefit to consumer for landscape and home improvement services. The State of Kansas was awarded \$2,500.00 in civil penalties and fees, and \$2,500.00 in consumer restitution.

State v Fenton Motors, Inc.

Butler County 08-000471

10-27-08

The Attorney General filed suit against the Defendant for violations of the KCPA related to deceptive and unconscionable business practices when soliciting and selling automobiles. The case was still pending at the end of 2008.

State v IFC Corporation

10-31-08

The Attorney General entered into a multi-state Assurance of Voluntary Compliance with IFC related to the invoicing of rental agreements for telecommunication services. IFC agreed to settle/release or refund accounts of Kansas consumers who wished to participate in the settlement as outlined in the Assurance of voluntary Compliance. The amount of savings to Kansas consumers is unknown at the time of this report.

State v LTS Insurance

Wyandotte County 08-CV-002193

11-03-08

The Attorney General filed suit on the Defendant(s) for violation of the KCPA related to misrepresentations in the selling of international drivers licenses and Kansas identification cards. The case was still pending at the end of 2008.

State v Vacation International (Elite Escapes)

Shawnee County 08-C-001047

11-12-08

The Attorney General received a Default Judgment against the Defendant(s) for violation of the KCPA related to misrepresentations in the marketing, soliciting and selling of travel club memberships. The State of Kansas was awarded \$1,937,200.00 in civil penalties and fees, and \$32,396.00 in consumer restitution.

State v Abee's Killcreek Farm & Landscape

Johnson County 08-CV-009915

11-20-08

The Attorney General filed suit against the Defendant for violations of the KCPA related to the willful exaggeration, false statements, concealment, omissions of material facts and not providing a material benefit for consumers in pest control services. The case was still pending at the end of 2008.

State v McKee Construction

Kiowa County 08-CV-000034

11-21-08

The Attorney General filed suit against the Defendant for violations of the KCPA related to misrepresentations, not providing a material benefit to consumers and not providing a 3-day right to cancel when entering a door-to-door transaction concerning home improvement and construction services. The case was still pending at the end of 2008.

State v Pfizer, Inc.

Shawnee County 08-C-001576

11-23-08

The Attorney General entered into a multi-state Consent Judgment with the Defendant related to misrepresentations in the marketing and advertising of drug products. The Defendant agreed to pay \$60,000,000.00, which Kansas received \$740,649.00 for the enforcement fund and fees, and injunctive measures regarding business practices.

State v Vintage Stoves, Inc., and Steven Thomas Radakovich

Reno County 08-CV-000192

11-25-08

The Attorney General filed suit against the Defendant(s) for violations of the KCPA related to making misrepresentations, false statements and not providing a material benefit to consumers for antique stove restoration services. The case was still pending at the end of 2008.

State v Eli Lilly/Zyprexa

Shawnee County 08-C-001505

11-29-08

The Attorney General entered into a multi-state Consent Judgment with the Defendant related to misrepresentations in the marketing and advertising of a drug product (Zyprexa). The Defendant agreed to pay the State of Kansas \$1,188,864.00 for the enforcement fund and fees, and injunctive measures regarding business practices.

State v Global Marketing Solutions d/b/a Dream Vacations

Shawnee County 09-C-000107

12-04-08

The Attorney General Filed suit against the Defendant for violations of the KCPA related to unconscionable telemarketing practices when selling vacation and travel packages. The case was still pending at the end of 2008.

State v Aaron & Gold/Ross Kurkland

Shawnee County 08-C-001871

12-12-08

The Attorney General filed suit on the Defendant for violations of the KCPA related to deceptive and unconscionable practices in selling, soliciting and advertising debt relief services to consumers. The case was still pending in 2008.

State v Mattel, Inc. & Fisher Price, Inc.

Shawnee County 08-C-001850

12-15-08

The Attorney General entered into a multi-state Consent Judgment with the Defendant(s) related to the selling of toys with lead paint in excess of applicable standards. The Defendant agreed to pay \$12,000,000.00, of which Kansas received \$212,266.00 for the enforcement fund and fees, and injunctive measures regarding business practices.

State v Airborne

Shawnee County 08-C-001861

12-29-08

The Attorney General entered into a multi-state Consent Judgment with the Defendant related to false and misleading claims in the marketing and advertising of dietary supplements. The Defendant agreed to pay \$7,000,000.00, of which Kansas received \$150,000.00 for the enforcement fund and fees, and injunctive measures regarding business practices.

ANTITRUST ENFORCEMENT ACTIONS

State of Kansas ex rel. vs BMG Music, Bertelsmann Music Group Inc., Capitol Records Inc., d/b/a EMI Music Distribution, Virgin Records America Inc., Priority Records, L.L.C., MTS Inc., d/b/a Tower Records, Musicland Stores Corporation, Sony Music Entertainment, Inc., Trans World Entertainment Corporation, Universal Music Group, Inc., Universal Music & Video Distribution Corp., UMG Recordings Inc., Warner-Elektra-Atlantic Corp., Warner Music Group Inc., Warner Bros. Records Inc., Atlantic Recording Corp., Elektra Entertainment Group Inc., and Rhino Entertainment Co.

DATE FILED: August 8, 2000

COURT: Southern District of New York

The Attorney General, along with 41 other states and three territories, filed suit against the nation's largest distributors of recorded music, affiliated labels and various retailers for price fixing. The complaint alleged that in the early 1990's, recorded music outlets such as Best Buy, Circuit City and Target began to offer stiff competition to mall-based music stores. The Defendants were accused of engaging in an unlawful scheme designed primarily to stop retail outlets from offering music at deep discounts. The parties agreed to a settlement which included a cash payment of \$13.86 to consumers who made a timely claim, and a contribution of music CD's to the States. Kansas share of the CDs was distributed to its public libraries in 2005. Residual cy pres monies were received in 2007 and distributed to Kansas colleges to fund music scholarship in 2008.

State of Kansas ex rel. v. Microsoft

DATE FILED: May 18, 1998

COURT: District of Columbia

The Attorney General, along with 18 other states and the Department of Justice, filed an antitrust action against Microsoft Corporation, alleging that Microsoft's conduct abusing its dominant position in the computer operating systems market violated state and federal antitrust laws. In November 2000, nine states and the Department of Justice entered into a settlement of the case which was approved by the Court. The State of Kansas and the other non-settling states continued to litigate and submitted a separate remedy proposal. Although there was significant industry opposition to the DOJ settlement, the court approved the settlement while at the same time granting judgment to the litigating states for some, but not all, of the additional relief suggested by the litigating states. Court oversight of the final judgment has been extended to May 12, 2011. Kansas and the other states continue to work with Microsoft to insure compliance with the settlement and judgment.

In re Cardizem CD Antitrust Litigation

DATE FILED: July 2, 2001

COURT: Eastern District of Michigan

An action was brought by the Attorney General, along with Attorneys General of 26 other states, seeking relief for a series of anti-competitive and illegal acts by which Defendants sought to delay or prevent the marketing of less expensive, generic alternatives to Cardizem CD, a highly profitable, brand-name drug for treatment of chronic chest pains, high blood pressure, and prevention of heart attacks. The parties agreed to an \$80 million settlement in 2004. Consumer payments were finally distributed shortly thereafter. Residual funds of \$283,000 remained in the consumer fund and were distributed by court order to the Visiting Nurse Associations of America ("VNAA") to expand the Heart Failure section of its Chronic Conditions Clearinghouse and to Consumers Union of U.S., Inc. to popularize and communicate nationally-developed, evidence-based guidelines to consumers for clinical preventative services for heart and vascular diseases.

State of Colorado, et al. v. Warner Chilcott Holdings Company, III, Ltd., et al, and Barr Pharmaceuticals, Inc.

DATE FILED: November 7, 2005

COURT: District of Columbia

Kansas, 33 other states and the District of Columbia brought suit contending that Warner Chilcott and Barr entered into an anticompetitive agreement not to compete. Warner Chilcott is a pharmaceutical company that develops, manufactures, and markets proprietary women's healthcare products. Barr is a pharmaceutical company that markets both proprietary and generic prescription pharmaceutical products. The affected drug was Ovcon, a women's oral contraceptive product. A \$5.5 million global settlement was reached with Warner Chilcott late in 2007. A global settlement with Barr Pharmaceuticals for \$5.9 million was reached in 2008, settling the matter.

United States of America, et al. v. JBS S.A. and National Beef Packing Company, LLC

DATE FILED: October 20, 2008

COURT: Northern District of Illinois

The Attorney General, twelve other states, and the United States Department of Justice filed suit to prevent the merger of JBS and National Beef. The parties owned the third and fourth largest beef packing companies in the United States. The complaint alleged the proposed merger would have eliminated head-to-head competition between the merging Parties, diminished competition in the market for purchase of fed cattle and USDA-graded boxed beef, and adversely affected prices cattle producers and ranchers received for their cattle as well as prices consumer paid for beef. The matter is in early stages of discovery.

United States of America, et al. v. Verizon Communications, Inc. and Alltel Corporation

DATE FILED: October 30, 2008

COURT: District of Columbia

The Attorney General, the Attorneys General of six other states and the United States Department of Justice, filed suit alleging the merger of Verizon and Alltel would lessen competition in interstate trade and commerce for mobile wireless telecommunications services in 94 U.S. cellular market areas resulting in higher prices and lower quality of service for cellular users. Parties have filed a request for approval of settlement requiring divestiture of affected cellular market areas and are waiting for a ruling.

State of Florida, et al. v. Abbott Laboratories, Fournier Industrie et Sante, and Laboratories Fournier, S.A.

DATE FILED: March 18, 2008

COURT: District of Columbia

The Attorney General, with 17 other states, and the District of Columbia filed suit against Abbott Laboratories, Fournier Industrie et Sante, and Laboratories Fournier, S.A. alleging unlawful monopolization of the fenofibrate market. Seven additional states joined the litigation in an amended filing. At the center of the litigation is the drug, TriCor, which is used to regulate triglyceride and cholesterol levels. The complaint alleges Defendants took anticompetitive steps to ensure that generic competition with TriCor was avoided, including sham patent litigation, forced market switches to product reformulations, and interference with normal and customary methods of generic channels of distribution. The litigation was stayed in August pending resolution of direct purchaser private party litigation against the Defendants. Direct purchasers and Defendants settled their litigation in late November. The States have filed a motion to dissolve the stay and set a trial date. As of the end of the year, the Court had not ruled on the motion.